IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.26 OF 2003
IN
INCOME TAX APPEAL(LOD) NO.7 OF 2003

The Commissioner of Income-I ..Appellant.

V/s.

M/s.Walvis Flour Mills Co.Ltd. ..Respondent.

Mr.A.S.Rao for appellant.

Mr.S.J.Mehta for respondent.

CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.

DATED : 25TH OCTOBER, 2005.

P.C. :-

1. Heard Mr.A.S.Rao, the learned counsel for the revenue and Mr.Mehta, the learned counsel for the respondent.

2. There is a delay of 96 days in filing the appeal. The explanation for delay is thus:-

> "..The delay has occurred of restructuring of the department. In order to streamline the work, the department is undergoing major restructuring. Assesses are being identified as per Municipal Limits. Case records accordingly being transferred from one charge to another and reassigned. It is on account of these reasons

> that limitation issue was lost sight off. Different officer have to acquaint themselves with new cases received by them under their charge and proceed from there. It is on account of these facts that the delay has occurred...."

3. This is routine and stereo-type explanation furnished by the revenue in almost all the applications for condonation of delay. It is for this reason that when the matter came before this bench on 5/2/2004, the matter was adjourned and the appellant-revenue was granted time of two weeks for filing better affidavit The order was not complied with and when the matter again came before us on 20/2/2004, further time of three weeks was granted to the appellant-revenue. Thereafter, again the matter came before us on 18th October, 2005 and the following order was passed on that day:-

> 1. In spite of specific directions and in spite of grant of time to file better affidavit in the month of February, 2005 no steps were taken by the revenue to comply with the said order though more than 10 months have lapsed.
>
> 2. By way of last chance, one week time granted to comply with the order passed by this Court.

4. Despite the matter having been adjourned thrice, supplementary affidavit setting out sufficient cause for delay has not been filed. Moreover, similar orders have already been passed in Notice of Motion No. 549 of 2003, Notice of Motion No.548 of 2003 and Notice

of Motion No.550 of 2003.

5. In the circumstances, we are left with no choice but to dismiss the notice of motion for non compliance and want of sufficient cause in filing the appeal belatedly.

6. Notice of motion stands disposed of accordingly with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)